

General Information Letter: Payroll services corporation is not protected under Public Law 86-272.

April 28, 1999

Dear:

This is in response to your letter dated March 29, 1999. Given the nature of your inquiry and the information you provide, I am responding with a General Information Letter. This is not to be taken as a statement of Department policy or as a binding ruling by the Department. As general information gathered in response to your particular questions, however, I hope that it is helpful to you. See 86 Ill. Adm. Code 1200.120(b) and (c).

In your letter you have stated the following:

This letter is in response to the IL-1120-ES, Estimated Income and Replacement Tax Payment Vouchers, that were received for the above-referenced company. xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx (xxxxxxxxxxxxxxxxxxxxxxxx) believes that it does not have nexus in Illinois and, therefore, it is not required to file the estimated payment vouchers or IL-1120, Corporation Income and Replacement Tax Return.

xxxxxxxxxxxxxxxxxxxx is a member of a consolidated group of corporations of which the ultimate parent is xxxxxxxxxxxxxxxxxxxx (xxxxxxxxxxxx). The xxxxxxxx affiliated group consists of approximately 160 corporations.

xxxxxxxx created xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx (xxxxxxxxxxxxxxxx) as a mechanism of consolidating into one place many of the payroll responsibilities of the approximately 160 corporations comprising the affiliated group. As a result, xxxxxxxxxxx now performs a portion of the payroll functions for most of the affiliated group's members. Among its functions, xxxxxxxxxxx prepares and files payroll tax returns with appropriated governmental agencies at the federal, state and local levels. In so doing, it has established a series of non-operating entities to serve as pay agents for various segments of xxxxxxxxxxx affiliated group. xxxxxxxxxxxxxxxxxxxx, a subsidiary of xxxxxxxxxxxxxxxxxxxxxxxxxxx, is one such entity. As its name implies, xxxxxxxxxxxxxxxxxxx is the common pay agent through which all employees of the xxxxxxxx affiliated group are paid, and in whose name related federal, state, and local payroll tax returns are filed on a combined basis. As such, xxxxxxxxxxxxxxxxxxx does not maintain employees, conduct operations, own property or generate revenue. Rather, it is merely a shell pay agent in whose name the foregoing payroll matters are processed; it exists solely as a matter of administrative convenience.

Based on the foregoing (i.e., the facts that xxxxxxxxxxxxxxxxxxx does not conduct operations, maintain employees, or own property), we do not believe that xxxxxxxxxxxxxxxxxxx has established any nexus in Illinois, let alone nexus sufficient to require it to file an Income and Replacement Tax return. Please update your record accordingly.

### **Response**

The determination of nexus is extremely fact specific. Therefore, the Department does not issue rulings regarding whether taxpayers have nexus with the State.

Such a determination can only be made in the context of an audit where a Department auditor has access to all relevant facts and information.

However, we can provide general information regarding income tax nexus with the State and these principles may determine how you respond to the receipt of form IL-1120-ES.

Under Section 201 of the Illinois Income Tax Act ("IITA"), a tax measured by net income is imposed on a corporation for the privilege of earning or receiving income in this State. Consistent with the standards of constitutional due process and the commerce clause, Illinois requires the filing of a return and payment of tax on income for any person doing business in Illinois.

Corporations whose only activity within Illinois consists of the mere solicitation of orders for items of tangible personal property, orders for which are accepted or rejected outside Illinois and filled from inventories maintained outside Illinois by shipment or delivery from those inventories to the customers within Illinois, are not subject to Illinois income tax because of the application of U.S. Public Law 86-272.

PL 86-272, however, does not apply to the sales of intangibles such as services.

With respect to these general criteria, your discussion of the activities of xxxxxxxxxxxxxxxxxxxx lacks the detail that would be most relevant to a determination of nexus. It appears, for example, that xxxxxxxxxxxxxxxxxxxx is providing a service to the other members of the affiliated group. If xxxxxxxxxxxxxxxxxxxx does provide service in Illinois, nexus in this state may have been established, in which case it would be required to comply with the Illinois Income Tax regime.

As stated above, this is a general information letter which does not constitute a statement of policy that either applies, interprets or prescribes tax law. It is not binding on the Department. If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Sincerely,

Kent R. Steinkamp  
Staff Attorney -- Income Tax